

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Bridget Sudall	Team: Team # 2	CCRB Case #: 200308167	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 10/11/2003 5:00 AM	Location of Incident: De Kalb Ave and Nostrand Ave, Brooklyn	Precinct: 79	18 Mo. SOL 4/11/2005	EO SOL 4/11/2005	
Date/Time CV Reported Sun, 10/12/2003 7:40 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 10/15/2003 1:44 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Joseph Digennaro	04419	906107	079 PCT
2. POM Carlos Fabara	14229	922317	079 PCT
3. SGT Sean Patterson	02379	921661	079 PCT
4. POF Anaida Carrillo	10165	921200	079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Leslie Woodley	10286	931450	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Sean Patterson	Force: Sgt. Sean Patterson used physical force against § 87(2)(b)	
B.POF Anaida Carrillo	Force: PO Anaida Carrillo used physical force against § 87(2)(b)	
C.POM Carlos Fabara	Force: PO Carlos Fabara used physical force against § 87(2)(b)	
D.SGT Joseph Digennaro	Force: Sgt. Joseph Digennaro used physical force against § 87(2)(b)	

### Synopsis

On October 11, 2003 at 5:00AM, § 87(2)(b) was arrested for § 87(2)(b). § 87(2)(b) claimed that Sgt. Patterson, PO Carrillo, PO Fabara and Sgt. Digennaro used excessive force while effecting his arrest. The officers said that while he was being arrested, § 87(2)(b) was struggling and throwing punches at them. § 87(2)(b) admitted to stabbing Sgt. Digennaro in the hand before he was handcuffed. § 87(2)(b) claimed that Sgt. Patterson and Sgt. Digennaro pushed his head against a car while they were handcuffing him. § 87(2)(b) then stated that after he was in handcuffs he kicked PO Fabara in the groin because he was angry. § 87(2)(b) was taken to the ground and stated that the officers were hitting him from behind and shackled his legs. § 87(2)(g)

§ 87(2)(b)

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### Summary of Complaint

On October 12, 2003 § 87(2)(b) called IAB and reported that her brother, § 87(2)(b) was arrested and beaten by the police on October 11, 2003 (Encl. 1A-G). IAB call out Group 31 responded to the complaint and § 87(2)(b) was interviewed at the 79<sup>th</sup> Precinct.

§ 87(2)(b) stated that on October 11, 2003, at 5:00AM he was at the corner of Dekalb Avenue and Nostrand Ave. Earlier in the evening, he had been drinking Bacardi rum and soda then drove to the *Sugar Hill Club*, located near the intersection. While in front of the club, § 87(2)(b) was drinking beer but claimed that he was not intoxicated. He noticed two females at the bus stop and crossed the street to speak with them. § 87(2)(b) said that he was “just being nice,” but that the females called the police. Officers from the 79<sup>th</sup> Precinct responded to the call. When they arrived on the scene § 87(2)(b) was fixing his car with a pair of pliers. § 87(2)(b) said that a tall bald officer, later identified during the CCRB investigation as Sgt. Patterson, approached him and was pointing in his face. § 87(2)(b) pushed Sgt. Patterson’s hand away from his face and tried to explain that he was just talking to the females. Sgt. Patterson told him that he was going to be placed under arrest and three officers, later identified during the CCRB investigation as Sgt. Digennaro, PO Fabara and PO Carrillo, approached him and pushed his head causing his left eye to hit his car. § 87(2)(b) was verbally objecting to his arrest. § 87(2)(b) stated that he felt his eye starting to swell and he was angry. While being placed in the police car § 87(2)(b) kicked PO Fabara in the groin. Upon kicking PO Fabara he was thrown to the ground and officers were hitting his body.

The complaint was forwarded to the CCRB on October 15, 2003 (Encl. 5A-B). § 87(2)(b) was subsequently interviewed by the CCRB on November 20, 2003 (Encl. 6A-F). § 87(2)(b) a § 87(2)(b) black male, § 87(2)(b) § 87(2)(g).

§ 87(2)(b) stated that on October 11, 2003, at 12:00AM he parked his 1985 Cadillac at the corner of Dekalb Avenue and Nostrand Avenue with the intent of hanging around outside the *Sugar Hill Club*. In addition to the two glasses of rum he had earlier in the night, he had had two 22once beers at the intersection near the club. § 87(2)(b) still insisted that he was not intoxicated at the time of the incident. § 87(2)(b) confirmed that he walked over to the bus stop and said, “how you doing,” to two females. § 87(2)(b) acknowledged that the females called the police and immediately following, he tried to leave the scene. In order to get his car started, he had to use pliers to reconnect his car battery. As he was getting into the driver’s seat of his car, two officers approached him. An officer, identified through the investigation as Sgt. Patterson, asked § 87(2)(b) about his interaction with the women at the bus stop. When § 87(2)(b) was explaining that he did not do anything to the females, he was still holding the pliers in his hand. § 87(2)(b) states that when he speaks, he uses his hands and admits that he *might have* been waving the pliers around.

Sgt. Patterson told § 87(2)(b) that he was going to be placed under arrest because the sticker on his car window had expired. Sgt. Patterson and Sgt. Diggennaro, identified through the investigation, grabbed § 87(2)(b) and slammed him against his car, causing his eye to swell. § 87(2)(b) said that Sgt. Diggennaro must have accidentally cut his hand while trying to place § 87(2)(b) under arrest because Sgt. Diggennaro complained of an injury. § 87(2)(b) was angry that his face was injured and that he had been arrested so while being led to the police car, he kicked PO Fabara in the penis.

§ 87(2)(b) was immediately taken to the ground face down. The officers that were on the scene, identified through the investigation as PO Fabara, Sgt. Diggennaro, PO Fabara and Sgt. Patterson, hit § 87(2)(b) on the right side of the head while he was face down on the ground. § 87(2)(b) could not be sure which officers did what, but he believed that he was hit on the back of the head with a hard object, like a flashlight. When he was lifted off of the ground, blood was coming out from his nose and the officers had cuffed his legs. He was transported to the 79<sup>th</sup> Precinct and EMS was called to transport him to § 87(2)(b). § 87(2)(b) was later taken to § 87(2)(b) because the x-ray machines at § 87(2)(b) were not functioning properly.

### **Results of Investigation**

#### *Civilian Witnesses*

The investigation uncovered that during the time of this incident there was also a call for “shots fired” at the *Sugar Hill Club*. PO Fabara and Sgt. Patterson stated that there was a crowd of police officers and civilians but they were all involved with the nearby shooting. § 87(2)(g)

§ 87(2)(b) The investigator attempted to find § 87(2)(b) and § 87(2)(b) the women that § 87(2)(b) were allegedly victimizing, but their last names were the only available information making it unfeasible to uncover any contact information.

#### **Officer Statements**

##### *Sgt. Patterson and PO Carrillo*

Sgt. Patterson was interviewed by the CCRB on January 5, 2004 (Encl. 11A-B and Encl. 13A-B). PO Carrillo was also interviewed by the CCRB on January 5, 2004. On October 11, 2003, Sgt. Patterson and PO Carrillo were assigned together in a marked police car #2447. They responded to a “shots fired” call at northeast corner Nostrand Avenue and Dekalb Avenue, *Sugar Hill Club*. On the scene, two women approached them and stated that § 87(2)(b) located on the southwest corner of the intersection, was verbally harassing them. The alleged victims never called 911. Sgt. Patterson and PO Carrillo approached § 87(2)(b) and asked him for his name. § 87(2)(b) was intoxicated and was using vulgar language toward Sgt. Patterson and toward the women across the street. Sgt. Patterson noticed a forged 20-day plate on § 87(2)(b)'s car and determined that he would be placed under arrest. In the meantime, PO Fabara, Sgt. Diggennaro and possibly PO Jimmy Ponce came to Sgt. Patterson's assistance.

Sgt. Patterson ordered the arrest of § 87(2)(b) and Sgt. Diggennaro, PO Fabara and PO Ponce assisted in handcuffing § 87(2)(b). While the officers were placing § 87(2)(b) against the car Sgt. Patterson noticed that § 87(2)(b) was in possession of pliers. Sgt. Diggennaro sustained a cut on his finger from the pliers but Sgt. Patterson and PO Carrillo could not ascertain whether § 87(2)(b) intentionally stabbed Sgt. Diggennaro because of their point of view. Sgt. Patterson stated that he used the amount of force that § 87(2)(b) was using against him to get § 87(2)(b) into the handcuffs. § 87(2)(b) was never elbowed or punched by any officer while they were trying to effect his arrest.

After being handcuffed, § 87(2)(b) was being escorted to the car when, unprovoked, he kicked PO Fabara in the groin. PO Fabara used a defensive maneuver and Sgt. Patterson and the other officers on the scene brought § 87(2)(b) to the ground face down. § 87(2)(b) was trying to kick the officers so Sgt. Patterson shackled § 87(2)(b)'s legs with leg cuffs. Sgt. Patterson and PO Carrillo did not hit § 87(2)(b) while he was on the ground and they did not witness any other officer hit § 87(2)(b). When § 87(2)(b) was finally placed in the police car he was bleeding from his nose. When they arrived at the precinct Sgt. Patterson called an ambulance for § 87(2)(b).

#### *PO Fabara*

PO Fabara was interviewed by the CCRB on December 31, 2003 (Encl. 9A-B). On October 11, 2003, PO Fabara was working conditions with Sgt. Digennaro and was not assigned to a specific vehicle. PO Fabara was at the stationhouse when a serious call came over the radio about a shooting at the *Sugar Hill Club*. PO Fabara responded to the incident with Sgt. Digennaro.

While at the *Sugar Hill Club*, PO Fabara noticed § 87(2)(b) talking to Sgt. Patterson and PO Carrillo; the situation seemed to be escalating. PO Fabara and Sgt. Digennaro walked over to § 87(2)(b) and the other officers. § 87(2)(b) was being uncooperative and was trying to walk away from the officers. One of the officers, PO Fabara could not recall which officer, decided that § 87(2)(b) would be arrested for a forged license plate. Upon hearing that, § 87(2)(b) became violent and started waving his arms. Sgt. Digennaro attempted to handcuff § 87(2)(b) and § 87(2)(b) stabbed Sgt. Digennaro in the finger with a pair of pliers. PO Fabara felt that there was no way that this injury was inflicted accidentally. PO Fabara said that he did not assist in handcuffing § 87(2)(b) but that Sgt. Patterson and another officer whom he could not identify were twisting his arms behind his back and pressing his body against a car. § 87(2)(b) was trying to twist his body in order to turn around and face the officers. Although PO Fabara said that it was possible that § 87(2)(b)'s head hit the car, PO Fabara stated that no officer pushed or elbowed § 87(2)(b)'s head while he was being handcuffed.

§ 87(2)(b) was being led back to the police car by Sgt. Patterson. PO Fabara was standing by the back passenger's side door of the police. As Sgt. Patterson approached with § 87(2)(b) § 87(2)(b) shrugged his shoulders and said, "fuck it." § 87(2)(b) then kicked PO Fabara in the crotch "with all his might." PO Fabara threw a punch at § 87(2)(b) to stop what he thought was an oncoming assault. Sgt. Patterson and other officers on the scene took § 87(2)(b) to the ground. While § 87(2)(b) was on the ground, PO Fabara did not hit, kick, or punch § 87(2)(b) nor did he see any other officers on the scene use this type of force against § 87(2)(b). When § 87(2)(b) was lifted from the ground, he was bleeding but PO Fabara could not identify where the blood was coming from.

#### *PO Leslie Woodley*

PO Woodley was interviewed at the CCRB on January 6, 2004 (Encl. 15A-B). On October 11, 2003, PO Woodley was assigned to process the arrest of § 87(2)(b). PO Woodley had a detailed memo book entry about the incident which was described to him by Sgt. Patterson. PO Woodley was not on the scene when § 87(2)(b) was arrested.

PO Woodley heard a 10-61 call over his radio-§ 87(2)(b) being transported back to the precinct after his arrest. PO Woodley did not pay attention to § 87(2)(b) when he arrived at the precinct because the area was dark and there was much activity going on at the stationhouse at the time. An ambulance immediately came and took § 87(2)(b) to § 87(2)(b). PO Woodley did not know who called the ambulance. Sgt. Patterson assigned the arrest to PO Woodley because he was free at the time and able to process the information. PO Woodley did not speak to § 87(2)(b) until after he returned from his hospital visit hours after his arrest. PO Woodley noticed that § 87(2)(b)'s left eye was swollen. PO Woodley could not recall if § 87(2)(b) described how he sustained the injuries.

#### *Sgt. Digennaro*

Sgt. Digennaro was interviewed at the CCRB on May 4, 2004 (Encl. 16A-C). On October 11, 2003, at about 5:00AM, Sgt. Digennaro was at the 79<sup>th</sup> Precinct with PO Fabara, who was processing an arrest. There was a radio call to a dispute outside the Sugar Hill Club on the corner of Dekalb Avenue and Nostrand Avenue.

When Sgt. Digennaro arrived at the intersection of Dekalb Avenue and Nostrand Avenue he saw PO Carrillo, PO Fabara and Sgt. Patterson struggling with § 87(2)(b). Sgt. Digennaro thought that § 87(2)(b)

was drunk. Sgt. Patterson was trying to get § 87(2)(b) handcuffed and Sgt. Digennaro tried to assist. § 87(2)(b) was throwing punches and trying to fight with the officers on the scene. § 87(2)(b) had some type of tool in his hand and intentionally stabbed Sgt. Digennaro in the knuckles. Sgt. Digennaro could not recall on which hand he sustained the injury. Sgt. Digennaro stepped away from § 87(2)(b) and allowed Sgt. Patterson to complete the handcuffing process. Sgt. Digennaro could not recall if § 87(2)(b) was ever placed on a car or if his head was ever slammed against a car.

As § 87(2)(b) was being led into the police car, he kicked PO Fabara in the groin area. § 87(2)(b) did not say anything before he kicked PO Fabara and was not complaining about any injuries. PO Fabara extended his arm to block any further blows from § 87(2)(b). Sgt. Digennaro knew that the officers on the scene had to shackle § 87(2)(b)'s legs but he could not recall if § 87(2)(b) was ever taken to the ground. Sgt. Digennaro did not see any officers on the scene hit or kick § 87(2)(b) before he was placed in the leg shackles. Sgt. Digennaro was taken to § 87(2)(b) where he received four stitches for his stab wound. Sgt. Digennaro never saw § 87(2)(b) after the initial contact on the street.

### **Police Documents**

The arrest report for § 87(2)(b) prepared by PO Woodley shows that § 87(2)(b) was arrested for § 87(2)(b) (Encl. 18A-B). The report states that § 87(2)(b) verbally harassed two females and that § 87(2)(b) was observed by police behind the wheel of a car. The report notes that § 87(2)(b) was in possession of a forged temporary license plate and, when he was questioned about the item, he became violent. § 87(2)(b) cut Sgt. Digennaro with pliers and kicked PO Fabara in the groin while in handcuffs. The arrest report also notes that § 87(2)(b) was taken to the hospital for injuries.

The SPRINT Print-out showed that at 4:58AM the 79<sup>th</sup> Precinct calls an ambulance for an injured complainant (Encl. 20A). EMS responds to the 79<sup>th</sup> Pct at 5:03AM and by 6:17AM the ambulance arrives at § 87(2)(b). Sgt. Patterson stated that § 87(2)(b) and § 87(2)(b) waived him down, drawing his attention to § 87(2)(b). The alleged victims never called 911.

The 79<sup>th</sup> Precinct logs § 87(2)(b) in at 5:25AM and shows that he was removed to § 87(2)(b) at 6:03AM (Encl. 19A). The log also notes that § 87(2)(b) was moved to § 87(2)(b). Roll call for the 79<sup>th</sup> Precinct shows PO Carrillo, PO Fabara, Sgt. Patterson and Sgt. Digennaro.

### **Medical Records**

§ 87(2)(b) was originally taken to § 87(2)(b) via ambulance and then transferred to § 87(2)(b) for a cat scan. According to certified medical record from § 87(2)(b), § 87(2)(b) sustained a displaced fracture of the left nasal bone. Also noted was soft tissue swelling over the left orbit (over eye well area). § 87(2)(b) was prescribed a 7 day regimen of Keflex, an antibiotic (Encl. 7A-NN).

### *Subject Officers CCRB History*

Sgt. Patterson has been a member of the NYPD for five years and has no prior substantiated CCRB complaints.

PO Carrillo has been a member of the NYPD for five years and has no prior substantiated CCRB complaints.

Sgt. Digennaro has been a member of the NYPD for ten years and has no prior substantiated CCRB complaints.

PO Fabara has been a member of the NYPD for five years and has no prior substantiated CCRB complaints (Encl. 3A-D).

### *Complainant's CCRB History*

§ 87(2)(b) has never been involved in any other CCRB complaints (Encl. 4A).

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

[REDACTED]

[REDACTED]

### Conclusions and Recommendations

#### *Undisputed Facts*

§ 87(2)(b) had consumed alcohol on October 11, 2003. At the corner of Delkalb Avenue and Nostrand Avenue, § 87(2)(b) approached two women at the bus stop and they called the police to complain about him. § 87(2)(b) started his car with a pair of pliers and was getting in his car to leave the scene. Sgt. Patterson and PO Carrillo approached § 87(2)(b) when he was getting into his car and asked him about his interaction with the women. § 87(2)(b) was arrested and Sgt. Patterson and Sgt. Digennaro had to put him against a car to get him into the handcuffs. § 87(2)(b) was placed in handcuffs and held against the car by Sgt. Patterson. § 87(2)(b) turned around and Sgt. Patterson started walking him toward the back seat of the police car. When § 87(2)(b) was about to be placed in the police car, he spontaneously kicked PO Fabara in the groin area. The officers took § 87(2)(b) to the ground and placed him in leg shackles. § 87(2)(b) was lifted off of the ground and placed into the police car; he was bleeding from somewhere on his face.

#### *Officer Identification*

PO Woodley was identified in BADs as the arresting officer. PO Woodley's memobook showed that he was assigned that arrest by Sgt. Patterson and summarized the details of the arrest naming Sgt. Digennaro and PO Fabara as being present on the scene. Roll call from the 79<sup>th</sup> Precinct identified PO Carrillo as Sgt. Patterson's operator. Their memobook entries, § 87(2)(b)'s arrest report, and their CCRB statements confirmed the officers' involvement in the arrest.

#### *Credibility*

§ 87(2)(g)

[REDACTED]

[REDACTED]

§ 87(2)(g)

Allegation A: Sgt. Sean Patterson used physical force against § 87(2)(b)

Allegation B: PO Anaida Carrillo used physical force against § 87(2)(b)

Allegation C: PO Carlos Fabara used physical force against § 87(2)(b)

Allegation D: Sgt. Joseph Digennaro used physical force against § 87(2)(b)

Patrol Guide procedure 203-11 directs officers when effecting an arrest to use “only that amount of force necessary to overcome resistance.” Penal Law §35.30 which is incorporated in Patrol Guide Procedure 203-11 states that it is permissible for officers to use force to effectuate an arrest. Also applicable is, Penal Law §35.27 which states; “*a person may not use physical force to resist a arrest...which is being effected or attempted by a police officer...when it would reasonably appear that the latter is a police officer.*” §

§ 87(2)(g). In Police Department v. Stiso, OATH Index No. 1886/99 (Aug. 1999); the Administrative Law Judge held that “[*the use of force in self defense, or to effectuate an arrest, must be manifestly or obviously unreasonable in order to constitute misconduct.*” § 87(2)(g)

. In PD v. Pusateri, OATH Index No. 1919/99 (Dec. 7, 1999), the ALJ held that “Even if [the complaining victims’] accounts were accurate, given the circumstances of his refusal to [submit] and his aggressive posture, such force would not be excessive. The evidence suggests that the force employed by the respondent[s] was not gratuitous. Sufferance of an injury while failing to cooperate during an arrest is not unusual and, absent other credible evidence, does not demonstrate that excessive force was employed.”

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: